

7-1

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Petitioner	)	
	)	
-VS-	)	CA No. 07-12064-PBS
	)	Pages 7-1 - 7-65
TODD CARTA,	)	
	)	
Respondent	)	

BENCH TRIAL - DAY SEVEN

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
March 29, 2011, 9:42 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

United States v. Todd Carta - Bench Trial Day 7

## 1 A P P E A R A N C E S:

2  
3 EVE A. PIEMONTE-STACEY, ESQ. and JENNIFER A. SERAFYN,  
4 ESQ., Assistant United States Attorneys, United States  
Attorney's Office, 1 Courthouse Way, Boston, Massachusetts,  
02210, for the Petitioner.

5 IAN GOLD, ESQ. and TAMARA FISHER, ESQ., Federal Public  
6 Defender Office, District of Massachusetts, 51 Sleeper Street,  
5th Floor, Boston, Massachusetts, 02210, for the Respondent.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ROBERT PRENTKY (By Video)				
By Ms. Serafyn:		7-4		
By Mr. Gold:			7-33	
By Ms. Serafyn:				7-55
By Mr. Gold:			7-57	

## P R O C E E D I N G S

THE CLERK: The Court calls Civil Action 07-12064, United States v. Todd Carta. Can counsel please identify themselves for the record.

MS. SERAFYN: Good morning, your Honor. Jennifer Serafyn for the United States.

MS. PIEMONTE-STACEY: Good morning, your Honor. Eve Piemonte-Stacey for the United States.

THE COURT: Thank you. Dr. Prentky, you're there? Can you hear us?

THE WITNESS: Yes, I am, your Honor.

THE COURT: I guess we got delayed due to parking?

THE WITNESS: Traffic and parking, your Honor. I apologize.

THE COURT: All right. Well, at this point, just for the record, I think Mr. Carta did waive his presence, but let's just get going because I am eager to finish this morning.

ROBERT A. PRENTKY  
having been previously duly sworn, was examined and testified by video further as follows:

CONTINUED CROSS-EXAMINATION BY MS. SERAFYN:

Q. Dr. Prentky, you didn't actually diagnose Mr. Carta with any mental illness, abnormality, or disorder, correct?

THE COURT: Can you hear?

THE WITNESS: I'm sorry, I'm not hearing you.

1 THE COURT: Is your mike on? Whom can you see? Can  
2 you see Ms. Serafyn?

3 THE WITNESS: Yes, I can, your Honor.

4 THE COURT: But you couldn't hear her?

5 MS. SERAFYN: Can you hear me, Dr. Prentky?

6 THE WITNESS: I didn't hear the question.

7 MS. SERAFYN: Can you hear me now?

8 THE COURT: Can you hear me?

9 THE WITNESS: Yes.

10 MS. SERAFYN: Dr. Prentky, this is Jennifer Serafyn.  
11 Can you hear me?

12 THE WITNESS: Yes, I can.

13 THE COURT: I'm thinking that there is a time delay.

14 MS. SERAFYN: It seems like there might be a little, a  
15 slight one.

16 Q. Dr. Prentky, you didn't actually diagnose Mr. Carta with  
17 any mental illness, abnormality, or disorder, correct?

18 A. Correct.

19 Q. And in your report you said that antisocial personality  
20 disorder is a defensible diagnosis, but you didn't make that  
21 diagnosis here because it's not germane; is that right?

22 A. That's correct.

23 Q. Okay. And in fact you didn't make any diagnosis that you  
24 felt was not germane to this case?

25 A. That's correct.

1 Q. And you're familiar with Section 4247 and Section 4248,  
2 right?

3 A. Yes.

4 Q. Okay. And in fact you cite both of those statutory  
5 sections in your report?

6 A. Yes.

7 Q. And neither of those sections provides that an evaluator  
8 should make only those diagnoses that he or she feels are  
9 germane, do they?

10 A. Well, the language of the statute obviously doesn't use  
11 the word "germane." In fact, the most important key points  
12 from the statute are not defined, so they're obviously left up  
13 to us to interpret. Since the DSM is routinely used in these  
14 cases, we are compelled to use that particular classification  
15 system for rendering diagnoses, so we are limited to the  
16 diagnostic categories that are provided in the DSM. So when I  
17 say "germane," I'm talking about what is available in the DSM.

18 Q. But there isn't anything in the statute that says that an  
19 evaluator should only make those diagnoses that he or she feels  
20 are germane or relevant to the case? The statutes don't limit  
21 it in that way, do they?

22 A. Well, I mean, I wouldn't want to make a diagnosis for the  
23 Court that was not germane or not relevant. The key issue here  
24 is that whatever this mental abnormality is, it results in  
25 something else happening, it results in some behavior. The

1 statute uses the words "results in, leads to." That's the way  
2 I interpret it. So when I talk about germane, it seems to me  
3 that whatever this mental abnormality is, it must lead to or  
4 result in the behavior that is of concern to the Court.

5 Q. Okay. Well, Dr. Prentky, you noted Mr. Carta's extensive  
6 substance abuse history in your report, but you didn't actually  
7 diagnose him with any substance abuse, did you?

8 A. I could have fully diagnosed Mr. Carta. I undoubtedly  
9 could have diagnosed him with ADD, antisocial personality  
10 disorder in Axis II. I might have been able to diagnose him  
11 with a substance abuse disorder in Axis I. But as I noted in  
12 the report, it only would have been germane if I thought that  
13 as a result of his substance abuse or as a result of his long  
14 history of antisocial behavior, it would result in or lead to  
15 the unwanted sexual behavior battery offenses against children.  
16 That, to me, would have been germane.

17 Q. Well, substance use or abuse can act as a disinhibitor;  
18 isn't that right?

19 A. Well, it certainly has acted as a disinhibitor for his  
20 antisocial behavior, but there's no indication ever that it has  
21 led to his committing a sex offense.

22 Q. Well, in fact, many of Mr. Carta's teenage boy victims  
23 were actually on some kind of drugs when Mr. Carta sexually  
24 molested them; isn't that right?

25 A. All by his self-report, Counsel. All of this information

1 comes by his self-report.

2 Q. And Mr. Carta actually gave drugs and alcohol to some of  
3 his child victims; isn't that right?

4 A. Once again, according to his self-report and according to,  
5 as I recall, Fred's brother reported that he had used both  
6 alcohol and marijuana, as I recall.

7 Q. So you didn't diagnose Mr. Carta with any substance abuse,  
8 but you do acknowledge that he has a lengthy history of  
9 substance abuse, correct?

10 A. Absolutely.

11 Q. And in fact he started drinking alcohol at age sixteen?

12 A. Correct.

13 Q. And he started smoking marijuana and using LSD at age  
14 eighteen?

15 A. That's correct.

16 Q. And he actually smoked marijuana continuously from the age  
17 of seventeen to the age of forty-one, right before he went to  
18 prison; isn't that right?

19 A. I don't think there's any question about his track record  
20 of substance use and a track record of antisocial behavior.  
21 The issue really is whether it is a statutorily relevant  
22 diagnosis, whether I could say that because of his long history  
23 of substance abuse and his long history of antisocial behavior,  
24 it will result in or lead to an outcome of a sexual assault on  
25 a child; and clearly there's no evidence for that other than



1 perhaps by his self-report, but beyond what he's reported,  
2 there's no behavioral evidence at all for it.

3 Q. And, Dr. Prentky, do you have all of the Bates-stamped  
4 discovery there with you?

5 A. Yes, I believe so.

6 Q. Okay. And I just want to draw your attention to Page 941  
7 of those Bates-stamped documents. This has actually been  
8 marked as Exhibit 25 in this case, and it comes from the  
9 psychosexual evaluation from the sex offender treatment  
10 program. Do you have Page 941, Dr. Prentky?

11 A. Substance Abuse History?

12 Q. That's right. And in the second paragraph under Substance  
13 Abuse History, it says, "With the exception of a couple of  
14 years, he acknowledges that he smoked continuously from  
15 seventeen to forty-one," and this is referring to marijuana,  
16 "with his heaviest use being daily from his thirties to the  
17 time of his incarceration. He estimates using 2 ounces of  
18 marijuana per week during this time. He noticed that when he  
19 quit smoking marijuana, he was more irritable."

20 Did I read that correctly, Dr. Prentky?

21 A. Yes. I have it in front of me.

22 Q. So Mr. Carta acknowledged actually having legal problems  
23 as a result of his marijuana use, correct?

24 A. Yes, absolutely.

25 Q. And in fact Mr. Carta acknowledged -- well, in fact the

1 records show that Mr. Carta was arrested for possession of  
2 marijuana at least three times?

3 (Witness examining documents.)

4 Q. Dr. Prentky, did Mr. Carta --

5 A. I'm sorry. Are you asking me a question?

6 Q. I am asking you a question, Dr. Prentky. Was Mr. Carta  
7 arrested for possession of marijuana at least three times?

8 A. Yes. Let's see. He was arrested at age eighteen, he was  
9 arrested at age nineteen, he was arrested at age twenty-nine,  
10 and he was arrested at age forty, it looks like.

11 Q. Now, in addition to his marijuana use, Mr. Carta also used  
12 LSD; isn't that right?

13 A. That's correct.

14 Q. And in fact he had these binge episodes where he would  
15 take three to four hits of LSD at a time; isn't that right?

16 A. That's correct.

17 Q. And in some instances he took up to fifty hits of acid in  
18 a single episode; isn't that right?

19 A. According to what is disclosed on Page 5 that you're  
20 referring to, that's what it says here.

21 Q. And in addition to the marijuana and the LSD, Mr. Carta  
22 also used cocaine, ecstasy, opium, and crystal meth; isn't that  
23 right?

24 A. Uhm. . .

25 (Witness examining document.)

1 A. I mean, I don't see that here on Page 5, Counsel, but I  
2 assume, if you're reading it, it's correct that he disclosed  
3 that.

4 Q. Okay. Well, on the bottom of Page 5, Bates stamped 941  
5 continuing to 942, it says, "Mr. Carta reports that he has also  
6 experimented with a variety of other drugs a few times. These  
7 include cocaine, ecstasy, opium, and crystal meth amphetamine."

8 So, Dr. Prentky, again, you acknowledge that drug use can  
9 be a disinhibitor for Mr. Carta; isn't that right?

10 A. Drug use serves a lot of different purposes for different  
11 people. Drug use numbs emotions. Drug use disinhibits  
12 antisocial behavior. Drug use is often used to help cope with  
13 adverse emotions. It does a wide range of different things.  
14 But the key is whether because of drug use he has serious  
15 difficulty refraining from sexually violent conduct, and in all  
16 those many, many years since the age of eighteen through the  
17 age of forty when he's been charged with drug use, he was not  
18 also charged, ever charged with a sexual offense. So for  
19 twenty-four years he reports using drugs. For twenty-four  
20 years he's charged with a whole range of different non-sexual  
21 crimes, but he's never charged with a sexual offense.

22 Q. Well, Dr. Prentky, Mr. Carta --

23 A. So how can I say that it's leading to a sexual offense?

24 Q. Well, Dr. Prentky, Mr. Carta was never charged with a  
25 sexual offense during those twenty-four years, but we know from

1 his self-report that he was molesting children during those  
2 twenty-four years; isn't that right?

3 A. We know only by his self-report, Counsel. It seems to be  
4 rather remarkable that he's charged repeatedly, repeatedly for  
5 a wide range of criminal conduct. It's not as though this man  
6 is unknown to the criminal justice system. He's in and out of  
7 the courts facing a wide range of different charges over  
8 twenty-four years, and yet he was never charged or arrested for  
9 a sexual offense involving a child. So all we know is what  
10 he's reporting.

11 Q. So, Dr. Prentky, are you saying that you don't credit  
12 Mr. Carta's self-report about the children that he sexually  
13 molested?

14 A. What I'm saying, Counsel, is that this whole issue of  
15 self-report takes center stage for me in this particular case  
16 because were it not for his self-report, I am not of the  
17 opinion that he ever would have been petitioned for civil  
18 commitment based solely on transportation of child pornography  
19 and criminal forfeiture.

20 Q. Now, Dr. Prentky, you did a risk assessment --

21 A. So the entire case for me -- I'm sorry, if I can make one  
22 last statement. The entire case for me rests on our belief in  
23 a wide range of different disclosures he has made about victims  
24 of varying ages. These disclosures have been made in widely  
25 different contexts, in different situations, to different

1 people. And the determination of the second prong, mental  
2 abnormality, as well as risk hinges on self-report; and the  
3 self-report, in my reading of the discovery, is highly  
4 variable. So that the government can choose whatever  
5 self-report shores up or supports its case; Mr. Carta can use  
6 whatever self-report he chooses to support his case, and we end  
7 up with this conundrum of, what self-report do we believe?  
8 That, to me, is really critical in this case. We're dealing  
9 with highly unreliable, in my opinion, unreliable evidence.

10 THE COURT: Well, is it likely that it's unreliable  
11 what he self-reported? In other words, do you doubt --

12 THE WITNESS: The unreliability --

13 THE COURT: Why would he report --

14 THE WITNESS: The unreliability, your Honor --

15 THE COURT: Go ahead.

16 THE WITNESS: Your Honor, the unreliability goes to  
17 the question, in my opinion, of consistency. The question is  
18 not, do I believe what he said to me any more or less than I  
19 believe what he said when he was at Butner? The issue is that  
20 he's reported a wide range of things, and what is actually  
21 true, nobody knows. We don't know exactly how many teenage  
22 boys he was sexual with. We don't know actually what their  
23 ages were. We don't know actually what he did with them or how  
24 long he spent with them. It's all by his disclosure, and his  
25 disclosures are different. I thought it rather remarkable that

1 if you look at the psychosexual evaluation that was done when  
2 he went down to Butner, you get a completely different flavor  
3 of who this man is than when you read the PS -- the history  
4 questionnaire that he filled out for Dr. Hernandez at Butner.  
5 What do we believe? When you look at the psychosexual, he  
6 clearly looks like a man who is primarily interested in  
7 adolescents in the age range of fifteen to twenty or  
8 twenty-five, in the fifteen- to twenty-year-old age range; but  
9 when he enters into the program at Butner and he fills out this  
10 questionnaire for Dr. Hernandez, he reports all manner of other  
11 things. What is it that we rely on? What is it that we  
12 believe? That's what I mean that his self-report as evidence  
13 in this case is unreliable. And if I might say so, your Honor,  
14 this is the issue why self-report is never used for determining  
15 criminal history when assessing risk. You know, the coding --

16 THE COURT: Excuse me, sir.

17 THE WITNESS: -- rules of the Static-99 are very  
18 clear. I'm sorry, your Honor?

19 THE COURT: No, I'm just wanting to make sure we  
20 finish this morning, and it's a little harder to read each  
21 other's body language over this distance, so I'm just hoping  
22 you'll finish up this sentence and we'll get another question  
23 asked.

24 THE WITNESS: All right, I'm done, your Honor. If  
25 I've answered your question, I'm done.

1 THE COURT: Yes.

2 Q. Now, Dr. Prentky, you performed a risk assessment in this  
3 case, correct?

4 A. Yes.

5 Q. And as part of that risk assessment, you scored the  
6 Static-99? Is that right?

7 A. Yes.

8 Q. But you scored the Static-99, even though you actually had  
9 an issue regarding whether you could score the instrument?

10 A. That's correct.

11 Q. And your issue was that the Static-99 is not recommended  
12 for offenders with only a Category B offense, right?

13 A. That's correct.

14 Q. And a Category B offense includes sexual behavior that is  
15 illegal, but the parties are consenting or there's no specific  
16 victim, correct?

17 A. I'm not sure how we define Category B, but Category B  
18 happens to include child pornography.

19 Q. Well, Exhibit 5 in this case is the Static-99 coding  
20 rules, and on Page 14 of those coding rules, it says,  
21 "Category B offenses include sexual behavior that is illegal  
22 but the parties are consenting or no specific victim is  
23 involved."

24 Are you familiar with that definition of a Category B  
25 offense?

1 A. Counsel, whatever it says, the most important thing is  
2 that child pornography is listed as a Category B offense. I  
3 don't have to make any further interpretations because it lists  
4 child pornography.

5 Q. Well, you were unclear as to whether Mr. Carta's risk of  
6 injury conviction could be counted as a sexual offense,  
7 correct?

8 A. That's, again, a technical issue with coding rules for the  
9 Static-99 because only Mr. Carta, once again, self-reports that  
10 he pled out to risk of injury.

11 Q. Right. And, Dr. Prentky, you're aware that the risk of  
12 injury charge to which Mr. Carta pled guilty actually started  
13 as a sex offense; isn't that right?

14 A. By Mr. Carta's report, we understand that.

15 Q. And the risk of injury conviction came about because  
16 Mr. Carta performed fellatio on Fred's fifteen-year-old  
17 brother; isn't that right?

18 A. You mean the offense that was pled out to risk of injury?

19 Q. Correct.

20 A. Is that what you're asking me?

21 Q. Yes.

22 A. Yes. And, of course, Mr. Carta later denied -- I believe  
23 he denied that he was sexual with Fred's brother.

24 Q. Well, Dr. Prentky --

25 A. I believe that --



1 Q. Dr. Prentky, Mr. Carta was sanctioned for this risk of  
2 injury conviction; isn't that right?

3 A. Yes.

4 Q. Okay. And part of the sanction included probation,  
5 correct?

6 A. He received seven years in jail suspended with five years  
7 probation.

8 Q. And one of the conditions of that probation was that  
9 Mr. Carta must participate in sex offender treatment; isn't  
10 that right?

11 A. That is correct.

12 Q. And that was as a result of the risk of injury conviction,  
13 correct?

14 A. That's correct.

15 Q. Now, you're aware, Dr. Prentky, that other psychologists  
16 scored Mr. Carta on the Static-99, right?

17 A. Yes, that's correct.

18 Q. And in fact as part of Mr. Carta's discharge report from  
19 the sex offender treatment program at Butner -- that's the  
20 program that he voluntarily dropped out of -- Mr. Carta was  
21 scored on the Static-99; isn't that right?

22 A. That's correct.

23 Q. And in fact the discharge report offers a justification  
24 for scoring the risk of injury conviction as a sex offense on  
25 the Static-99. Do you remember reading that?

1 (Witness examining document.)

2 A. I'm sorry, Counsel. I didn't hear. You said --

3 Q. I said that --

4 A. -- justified scoring risk of injury --

5 Q. Right, the discharge report from the sex offender  
6 treatment program at Butner explains why the Static-99 could be  
7 scored on Mr. Carta. Do you remember that?

8 A. Yes.

9 Q. And, Dr. Prentky, I want to draw your attention to that  
10 discharge report. It was marked as Exhibit 27, specifically  
11 Bates stamp 957. Do you have that page in front of you,  
12 Dr. Prentky?

13 A. Yes, I do.

14 Q. And the last paragraph there says "Assessment of Risk,"  
15 and I'm just going to start reading the third sentence. It  
16 says, "The fifteen-year-old male reported to police that  
17 Mr. Carta performed fellatio on him. During the SOTP  
18 evaluation, Mr. Carta acknowledged that he was originally  
19 charged for sexually abusing the minor, which was dropped in  
20 exchange for his guilty plea to the risk of injury charge.  
21 Additionally, Mr. Carta admitted that he engaged in sexual  
22 contact with this victim. Therefore, there is credible  
23 documentation to suggest that Mr. Carta has committed and been  
24 officially sanctioned for a hands-on sexual offense warranting  
25 the use of the Static-99." Did I read that correctly,

1 Dr. Prentky?

2 A. Yes, you read it correctly.

3 Q. Now, you read Dr. Bard's report in this case, right?

4 (Witness examining document.)

5 Q. Dr. Prentky, did you read Dr. Bard's report in this case?

6 A. Yes. Yes, I said "yes."

7 Q. Sorry, I didn't hear you. And he scored the Static-99;  
8 isn't that right?

9 A. I have Dr. Bard's report in front of me here, and it  
10 appears that he completed the Static-99 along with the RRASOR  
11 and MnSOST-R.

12 Q. And you read Dr. Phenix's report in this case, correct?

13 A. Correct.

14 Q. And Dr. Phenix is actually one of the authors of the  
15 coding manual on the Static-99; isn't that right?

16 A. That's correct.

17 Q. And Dr. Phenix scored Mr. Carta on the Static-99, correct?

18 A. That's correct.

19 Q. Now, Dr. Prentky, did you consult with anyone about  
20 whether you could score the Static-99 in this case based on  
21 that risk of injury charge?

22 A. I occasionally consult with Karl Hanson about specific  
23 questions that I have with regard to his coding rules.

24 Q. And did you consult with Dr. Hanson in this case about the  
25 risk of injury charge and whether it was a Category B or

1 Category A offense?

2 A. I generally ask him about broader issues than a specific  
3 coding rule. I don't recall. I corresponded with him, I  
4 believe, in the last six months. I don't recall what the last  
5 e-mail interchange concerned.

6 Q. Now, even though you weren't sure whether you could score  
7 Mr. Carta on the Static-99, you scored it anyway; isn't that  
8 right?

9 A. I scored it -- I attempted to score it in part because, as  
10 you pointed out, the other examiners had used it, despite the  
11 fact that I'm somewhat leery as to its appropriateness in this  
12 case.

13 Q. And when you scored Mr. Carta on the Static-99, he got a  
14 score of 6; isn't that right?

15 A. Yes. I gave him a score of 6. Apparently Dr. Bard gave  
16 him a score of 5.

17 Q. And the average score on the Static-99 is 2; isn't that  
18 right?

19 THE COURT: The average of what?

20 MS. SERAFYN: The average score that offenders get on  
21 the instrument is a 2.

22 MR. GOLD: That's not the whole story, but. . .

23 Q. Dr. Prentky, isn't the average score on the Static-99 a 2?

24 A. The average score when the Static-99 is completed on  
25 general population of offenders, general population of sex

1 offenders, that's the average score.

2 Q. And a score of 6 on the --

3 A. These are obviously --

4 Q. I'm sorry?

5 A. These are obviously not people who have been petitioned  
6 for civil commitment.

7 Q. A score of 6 on the Static-99 places Mr. Carta in the  
8 high-risk category; isn't that right?

9 A. According to that arbitrary label that's given to that  
10 cutoff score on the Static-99.

11 THE COURT: What's the highest it goes again?

12 MR. GOLD: It goes to 12.

13 THE WITNESS: 12.

14 THE COURT: 12? So what the 6 is, how many people  
15 within that cohort will reoffend? Do you remember the  
16 percentage? Is that the twelve to twenty?

17 THE WITNESS: I can tell you, your Honor, we'd have to  
18 look at the new norms, which I have here.

19 (Witness examining document.)

20 THE WITNESS: There are two obviously -- there are a  
21 number of different normative samples that are now used. The  
22 (Inaudible) third of the Canada sample, which is the low-risk  
23 sample, the recidivism rate is 10.4 percent over five years and  
24 13.2 percent over ten years, but as I said, that's their  
25 low-risk sample. And then. . .

1 (Witness examining document.)

2 THE WITNESS: The complete sample, the recidivism rate  
3 is 21.3 percent over five years and 29.6 percent over ten  
4 years.

5 Q. So, Dr. Prentky, even though Mr. Carta scored in the  
6 high-risk category on the Static-99, you don't think he'll have  
7 serious difficulty in refraining from sexually violent conduct  
8 if released; is that right?

9 A. I think I made fairly clear, Counsel, that if you look at  
10 his long history, criminal behavior, there is reason to  
11 conclude that he will have serious difficulty refraining from  
12 nonsexual criminal conduct. Based on his long history, that's  
13 a reasonable conclusion. But if you ask me whether he will  
14 have difficulty refraining from engaging in sexually abusive  
15 conduct involving a child, I would have to categorically  
16 conclude that the answer is "no," given that there's no  
17 behavioral evidence for it. The only evidence we have is what  
18 he has reported. He has never been charged or sanctioned for  
19 any battery offense involving a child. So to conclude that he  
20 is at high risk to refrain from engaging in a behavior that  
21 he's never been charged or sanctioned for would be very  
22 difficult for me. It would be based solely on his self-report.

23 Q. Dr. Prentky, you would agree, though, that the Static-99  
24 assesses an individual's risk of sexual recidivism, right?

25 A. Yes. What you see with the Static-99, I think it's very,

1 very clear, if you look at the way that Mr. Carta acquires his  
2 sixth point, it's primarily from those items that reflect his  
3 long history of antisocial behavior. He would be coded much  
4 more like a rapist than a child molester for all of the  
5 criminal behavior involving non-sexual violence.

6 Q. Well, Dr. Prentky, you didn't include a copy of your  
7 Static-99 coding sheet in your report, did you?

8 A. I believe that I only included the SVR-20 in my report.

9 Q. Now, Dr. Prentky, are you familiar with the Static-99R or  
10 the Static-99 Revised?

11 A. Yes.

12 Q. Okay. And the Static-99R is different from the Static-99;  
13 isn't that right?

14 A. The Static-99R differs from the Static-99 only in one  
15 material respect, and that is the age variable. Other than  
16 that, the other nine variables are identical, with the  
17 exception of some tweaking of language to make some of the  
18 items clearer; but, as I said, the only substantive change is  
19 the age variable. And then of course the introduction of all  
20 of these new norms --

21 Q. So the --

22 A. -- Static-99R.

23 Q. Okay. So the Static-99R is different from the Static-99,  
24 correct?

25 A. Only in the respect that I mentioned.

1 Q. Okay. And there's actually --

2 A. There's one item that has been changed.

3 Q. And there's actually a different score sheet for the  
4 Static-99R; isn't that right?

5 A. Honestly, there doesn't have to be another score sheet  
6 because as long as you know how to score the age variable, the  
7 other items are the same.

8 Q. Well, on the Static-99 Revised score sheet, it breaks out  
9 age into many more different categories than the original  
10 Static-99 score sheet did; isn't that correct?

11 A. That's what I just said, Counsel. If you know how to  
12 score the eighth variable, the other items are the same.

13 Q. And you didn't score the Static-99R in this case, did you?

14 A. Given his age, the Static-99R -- that is, the adjusted for  
15 being younger -- would not have been given risk benefit. In  
16 other words, it wouldn't have increased risk because of his  
17 age. He's fifty years old.

18 Q. But you didn't score the Static-99R in this case, right?  
19 You scored the original Static-99?

20 A. Counsel, what I said is that he would receive the lowest  
21 score on that age variable by virtue of his age. He's fifty  
22 years old. So materially it makes no difference. It makes a  
23 big difference if you're using the Static-99 on a young  
24 offender. On a young offender, say someone who's twenty years  
25 old, they get three points as opposed to one point in the



1 original Static-99.

2 Q. Dr. Prentky, I'm just --

3 A. If Mr. Carta was twenty years old, then I would have been  
4 remiss in not using it. At the age of fifty, it really doesn't  
5 matter.

6 Q. I'm just asking you, Dr. Prentky, which instrument did you  
7 score in this case? Your report says that you scored the  
8 Static-99.

9 MR. GOLD: That's been asked and answered, your Honor.  
10 He said --

11 A. That's correct.

12 THE COURT: Yes, I think this format is so difficult.  
13 I think we need to just sort of -- how much longer do you think  
14 you have?

15 MS. SERAFYN: Sorry, your Honor. I didn't think I had  
16 an answer to that question. He's telling me about the age  
17 score, and I'm just asking him whether or not he scored the  
18 Static-99R.

19 THE COURT: Oh, the R.

20 MR. GOLD: It's clear from his report that --

21 THE COURT: I don't know if it's clear. I'm trying to  
22 finish this. How much longer do you think you have?

23 MS. SERAFYN: Twenty to thirty minutes?

24 THE COURT: Fine, all right.

25 A. Counsel, I scored the Static-99 as it says in my report;

1 and, as I just said, given his age, it wouldn't have made any  
2 difference. The bottom line is the same.

3 Q. Okay. Dr. Prentky, you're familiar with the Association  
4 for the Treatment of Sexual Abusers, correct?

5 A. Yes.

6 Q. Okay. And this is also known as ATSA, right, A-T-S-A?

7 A. Correct.

8 Q. And ATSA has an annual conference, correct?

9 A. Yes.

10 Q. And are you now a member of ATSA?

11 A. I believe I'm still a member. I'm not sure.

12 Q. Now, at this annual ATSA conference, new research is  
13 typically presented; isn't that right?

14 A. Counsel, I have not been to an ATSA conference in well  
15 over a decade, but I would imagine that that's the case.

16 Q. Okay. Well, there are typically sort of prominent  
17 researchers in the field that present at the ATSA conference;  
18 isn't that right?

19 A. As I said, Counsel, I have not been in a long time, so I  
20 don't know who it is that presents at ATSA or the quality of  
21 the presentations.

22 Q. Well, have you ever presented at an ATSA conference?

23 A. A long time ago, yes.

24 Q. And people like Karl Hanson, David Thornton and Amy  
25 Phenix, they've presented at ATSA conferences; isn't that

1 right?

2 A. That's correct.

3 Q. So you didn't attend the ATSA conference in the fall of  
4 2009, did you?

5 A. I did not.

6 Q. Okay. And were you aware that at that conference in 2009,  
7 there was a presentation about the Static-99R?

8 A. It certainly would not surprise me.

9 Q. Okay. And were you aware that at that conference in the  
10 fall of 2009, Karl Hanson, Leslie Helmus, and Amy Phenix  
11 presented the Static-99R and said that it should replace the  
12 Static-99?

13 A. I have had subsequent communications with Karl Hanson, and  
14 he has recommended to me the use of the Static-99R in  
15 combination with the Static-2002R.

16 Q. Okay. And now the Static-99 has these new norms, and  
17 there's also these sort of samples that are associated with the  
18 Static-99R; isn't that right?

19 A. That's correct.

20 Q. And have you ever scored the Static-99R as part of a risk  
21 assessment?

22 A. Counsel, I think that I have tried to answer this question  
23 several times. Of course I've scored the age variable. I've  
24 always scored the new age variable on the Static-99R when it  
25 weighs in the direction of risk regarding a client that I'm

1     scoring. If it doesn't, it makes no difference because the  
2     other items are the same. The only key item is age. When you  
3     have someone of Mr. Carta's age, it doesn't matter. The weight  
4     that is risk-relevant is inversely related to age, so that the  
5     younger the offender, the higher the risk and the higher the  
6     weight attributed to that coding for that particular item.

7     Q. So it sounds to me like you're saying you view the  
8     Static-99 and the Static-99R as interchangeable.

9     A. With the exception of the age variable, they are  
10     interchangeable.

11    Q. So even though the developers of the Static-99R have said  
12    that the Static-99 should not be used anymore, you continue to  
13    use it where the age variable isn't affected; is that fair?

14    A. Counsel, you're trying to sort of trap me into a silly box  
15    here. I'm saying that I have a very clear and full  
16    understanding of the differences of all of these different  
17    scales. I understand what is risk-relevant. I understand that  
18    the intent at this point is to take into consideration a more  
19    differentiated weighting with respect to age as it becomes  
20    risk-relevant. What I've said to you -- and it is really not  
21    material for Mr. Carta at all -- is that I do score the new age  
22    item routinely --

23    Q. Did you say that in your report here, Dr. Prentky --

24    A. -- Static-99, most of the people that I scored the  
25    Static-99 on tend to be older. I can recall only one instance

1 in which I scored at age variable and coded someone a 3 because  
2 of their youth. With Mr. Carta's age, as I said three or four  
3 times already, it makes no difference. With respect to the  
4 other nine items, the only difference with all of those nine  
5 items is some slight tweaking of language, but the way those  
6 items are coded remains the same.

7 Q. But the norms are different; isn't that right?

8 A. And I always use the new norms. I usually use the high  
9 risk, when I'm doing a civil commitment evaluation, I use the  
10 norms for what Karl Hanson referred to as this high-risk group  
11 or high-risk sample.

12 Q. And, Dr. Prentky, both Dr. Bard and Dr. Phenix score the  
13 Static-99R; isn't that right?

14 (Witness examining document.)

15 A. I have Dr. Bard's report here. He says that according to  
16 the Static-99, a score of 5 suggests -- he doesn't say  
17 Static-99R, so I don't know whether he used the Static-99R that  
18 is the age variable or not, but he says that he used the  
19 Static-99.

20 Q. Okay. Well, on Page 12 at the bottom, his report says,  
21 "Alternatively, if one was to use the Static-99R, which  
22 accounts for more recent age-related research, Mr. Carta would  
23 receive a score of 4." Do you see that?

24 MR. GOLD: We should make the record clear as to which  
25 report, the date of the report that Dr. Prentky is referring

1 to, or counsel.

2 THE WITNESS: I'm looking at a report dated July 8,  
3 2008. I have three reports here from Dr. Bard, and all three  
4 of them are dated July 8, 2008.

5 Q. Dr. Prentky, do you know if you read Dr. Bard's  
6 November 3, 2010 report?

7 A. I'm not certain if I did because, as I said, I'm holding  
8 three copies of his report, and they all have the same date,  
9 July 8, 2008.

10 Q. Are you familiar with the Static --

11 A. I --

12 Q. That's fine, Dr. Prentky.

13 A. I'm sorry, am I familiar with what?

14 Q. Are you familiar with the Static-2002?

15 A. Yes.

16 Q. And you didn't score the Static-2002 on Mr. Carta, did  
17 you?

18 A. No, I did not.

19 Q. Now, in addition to the original Static-99, you also  
20 scored an instrument called the SVR-20; is that right?

21 A. That's correct.

22 Q. And the SVR-20 is not an actuarial instrument, correct?

23 A. That's correct.

24 Q. And the SVR-20 forces you to use structured professional  
25 judgment, correct?

1 A. Correct.

2 Q. Okay. And the SVR-20 isn't a particularly widely used  
3 instrument for the evaluation of sex offenders, right?

4 A. You said it's not widely used?

5 Q. Correct.

6 A. Is that what your question is?

7 Q. Yes, for the evaluation of sex offenders.

8 A. I'm not sure how to answer that question. I don't know  
9 what is widely used. Obviously the Static and its progeny are  
10 the most widely used. Following that, there are a whole slew  
11 of other scales that are occasionally used like the MnSOST-R,  
12 the SORAG, the SVR-20.

13 Q. And Dr. Phenix didn't score the SVR-20 in this case,  
14 right?

15 A. You said she did not?

16 Q. She did not.

17 A. No.

18 Q. And Dr. Bard didn't score the SVR-20 either, correct?

19 A. Both of them more particularly score the MnSOST-R.

20 Q. And, to your knowledge, has the SVR-20 ever been scored in  
21 an Adam Walsh sex offender case?

22 A. I am not really sure, Counsel. I don't know how to  
23 respond to that question. I don't know the answer to that.

24 Q. Now, you included a copy of your SVR-20 score sheet in  
25 your report, correct?

1 A. Yes.

2 Q. And you didn't include a score sheet from the Static-99,  
3 even though you scored that instrument and got a score of 6,  
4 right?

5 A. Yeah, I didn't include the score sheet for the Static-99  
6 because my score was the same as the score of Dr. Phenix.

7 Q. And it's fair to say that you relied on Mr. Carta's SVR-20  
8 score in forming your ultimate opinion in this case, and you  
9 disregarded the Static-99 score?

10 A. No, I wouldn't say that I disregarded it. I indicated at  
11 the outset that I am somewhat cautious in the use of the  
12 Static-99. I think I made that clear. I think both of these  
13 structured estimates of risk reflect more or less the same  
14 thing, and that is Mr. Carta's lengthy history of antisocial  
15 behaviors. If you look at the SVR-20, you find something  
16 similar to what you find on the Static-99, that he has a  
17 criminogenic life-style. And that's reflected on the Scale 1,  
18 Psychosocial Adjustment, where I've given him a score of 9 out  
19 of 22. And I believe -- let me see.

20 (Witness examining document.)

21 A. I'm sorry. No, it is much higher than that. I said, "Not  
22 surprisingly, Mr. Carta received a high overall score on  
23 (Inaudible) risk factors." 17 out of 22 is much higher than  
24 that, and that reflects his nonsexual criminal life-style. The  
25 second group of items, the sex offenses, has seven risk



1 factors, and he received essentially a score of 1 or 2 out of  
2 14.

3 I think that it puts in fairly clear relief where his risk  
4 lies, and it does so far more dramatically than the Static-99.  
5 I mentioned earlier that I think most of the risk conveyed on  
6 the Static-99 is similarly conveyed by his criminogenic  
7 life-style. The difference here is that on the SVR-20, it  
8 breaks it out, and it's fairly dramatic, the 17 out of 22 for  
9 nonsexual criminal life-style and 1 or 2 out of 14 for sex  
10 offenses.

11 Q. Dr. Prentky, are you aware of research that shows that  
12 prior sexual offending is specifically predictive of sexual  
13 recidivism?

14 A. Prior sexually offending, absolutely critical, yes.

15 Q. And are you aware of research that shows that child  
16 pornography offenders who have ever committed a contact sexual  
17 offense were the most likely to reoffend?

18 A. Yes.

19 MS. SERAFYN: Your Honor, if I could just have a  
20 moment.

21 (Discussion off the record between government  
22 attorneys.)

23 MS. SERAFYN: Nothing further, your Honor.

24 REDIRECT EXAMINATION BY MR. GOLD:

25 Q. Good morning, Dr. Prentky.

1 A. Good morning.

2 Q. Dr. Prentky, is there only one way for a forensic  
3 psychologist such as yourself to do a risk assessment in a case  
4 such as this?

5 A. Obviously not. There are a range of approaches. I'm not  
6 sure exactly what you're asking, but the answer is "obviously  
7 not."

8 Q. Well, are Dr. Hanson and his group, Zeus on Mount Olympus,  
9 does a forensic psychologist have to do what they say in terms  
10 of risk assessment?

11 A. No, of course not.

12 Q. How does a forensic psychologist such as yourself go about  
13 choosing the tool or the method in which he or she will do a  
14 risk assessment?

15 A. I can share what I do. I certainly can't impart what  
16 should be done or what other people do. I think what troubles  
17 me the most is obfuscation or lack of clarity, and I try my  
18 level best to try to proceed in a way that lends integrity to  
19 what I share with the court, but also some sense of clarity and  
20 some neutrality, some dispassion. And a lot of what we have  
21 been struggling with, it seems to me, misses the large picture  
22 here. The large picture is who Mr. Carta is in terms of his  
23 long criminal history. The large picture is what Mr. Carta can  
24 be expected to do in the future based solely on his behavior as  
25 opposed to his self-report. And to get bogged down in what I

1 regard as the sort of minutia of struggling with what of his  
2 self-report we invest credibility in and what of his  
3 self-report we disregard simply because it doesn't support our  
4 argument, I don't believe that that contributes anything to the  
5 resolution of this case. That's the main reason why I struggle  
6 with the whole issue of self-report, and I believe it's the  
7 main reason why on the Static-99 the coding rules eschew the  
8 use of self-report for coding the criminal history variables.  
9 As I mentioned before, it all goes to reliability. Consistency  
10 is the whole mark of reliability. If we're all using different  
11 pools of evidence to arrive at our conclusion, then obviously  
12 that lends to a high degree of unreliability.

13 THE COURT: Well, was he consistent --

14 A. So --

15 THE COURT: Let me just ask you. That's a good point,  
16 consistency here. There were inconsistent points, but there  
17 were some consistent ones. So do you credit the fact that he  
18 had multiple sexual encounters with more than one  
19 thirteen-year-old?

20 THE WITNESS: I credit it as much, your Honor, as all  
21 the rest of his self-report that he --

22 THE COURT: Well, but I'm just holding you to what you  
23 said, which is the consistency. There were some things he was  
24 inconsistent on, like what age group he was attracted to and  
25 the like; but on one thing he seemed to be pretty consistent

1 with, both to you and down in Butner and here at trial, that he  
2 did have multiple sexual encounters with thirteen-year-olds.

3 THE WITNESS: Yes. Yes, your Honor, and I indicate  
4 that in my report, that I think the most reasonable conclusion  
5 at this point is that he was sexual with three  
6 thirteen-year-olds. I think that the weight of evidence seems  
7 to be converging on that conclusion.

8 THE COURT: And so what you're saying is, what may not  
9 be so clear is whether he continues to have that attraction  
10 because he's been inconsistent across time with where his  
11 primary focus is?

12 THE WITNESS: Yes, trying to draw a defensible  
13 conclusion is -- see, this impacts in two respects: One,  
14 obviously, is the mental abnormality, whether he qualifies for  
15 a hebephilia diagnosis; and the other is the risk that he  
16 poses. And this ambiguity impacts both of those dimensions or  
17 elements. With respect to hebephilia, I concluded that, again,  
18 although I agree that there seem to be three thirteen-year-olds  
19 that he has been sexual with, again, the weight of the  
20 self-reported evidence seems to suggest that his preferred  
21 preference is for individuals in an age range of roughly  
22 fifteen to twenty or fourteen to fifteen and eighteen,  
23 nineteen, and twenty, in that ballpark.

24 Q. Dr. Prentky, can I interrupt you here.

25 A. Yes.

1 Q. The statement that you just made, what is the diagnostic  
2 significance of that statement? If that is the case, does  
3 Mr. Carta in the year 2000 or the year 2010, in your opinion,  
4 qualify for a DSM diagnosis or sexual disorder diagnosis?

5 A. I have stated in my report, and I tried to spell out my  
6 rationale for it, that the answer is "no"; that at the very  
7 beginning I feel like I took a somewhat more nuanced view of  
8 hebephilia as a legitimate diagnosis, and the basis for that  
9 position is expounded in my report. Unfortunately, the  
10 legitimacy of the diagnosis in Mr. Carta's case is mired in  
11 conflicting self-reports, some of which appears to support the  
12 diagnosis and much of which does not. In truth, I believe, as  
13 I mentioned just a moment ago, that his sexual preference, as I  
14 stated in the report, seems most likely to fall in the ballpark  
15 of fourteen, fifteen to eighteen, nineteen or twenty. So in  
16 translating that to a diagnosis, it becomes somewhat  
17 problematic.

18 Historically, if we go all the way back to Krafft-Ebing,  
19 and that was something like 85 years ago, Krafft-Ebing would  
20 have said "absolutely yes" because the way he defines  
21 hebephilia, it went all the way up to age nineteen. If you  
22 look more recently at writings of people like Glueck, and then  
23 most recently with Blanchard, 2010, the conclusion would be  
24 "no" because the age range is very clearly at the low end of  
25 adolescence, from eleven to fourteen. And in the most recent

1 Frances and First paper, they too would unequivocally say "no"  
2 because being sexually aroused to teenagers, in their opinion,  
3 is not deviant. I believe that they comment that normal men --  
4 and they use the word "normal" -- have fantasies and urges in  
5 response to pubescent targets. I believe those were their  
6 words.

7 So I guess one could even raise the example of someone  
8 like Miley Cyrus who was fourteen years old when she debuted as  
9 Hannah Montana. So being sexual -- and I think again this is  
10 the distinction that Michael First makes -- being sexual with  
11 Miley Cyrus is a crime but not a mental disorder in their  
12 opinion.

13 So it seems as though we end up with these two conflicts,  
14 one of which is, which of Mr. Carta's many disclosures do we  
15 want to believe? And the second conflict is, which of all of  
16 the different professionals who have espoused opinions about  
17 this diagnosis of hebephilia do we want to believe? So that  
18 goes back to my original comment that I tried to take a  
19 somewhat more nuanced view of it and say that it was  
20 potentially legitimate, but that in this particular case, it's  
21 difficult because we do not have a set of codified operational  
22 criteria for hebephilia. The only criteria that we have are  
23 from Blanchard, and Blanchard in his most recent article talks  
24 about eleven to fourteen. So if we're talking about a sexual  
25 preference for that particular age, Mr. Carta clearly doesn't

1 meet it. I think, again, the weight of evidence, despite these  
2 three thirteen-year-olds, the weight of evidence is that his  
3 preference is for mid to late adolescent teenagers.

4 Q. Dr. Prentky, you've testified on, I think, direct  
5 examination and also on cross this morning about the antisocial  
6 personality diagnosis. Could Mr. Carta have been diagnosed  
7 with antisocial personality disorder at the time of his initial  
8 arrest?

9 A. He clearly met the adult criteria for APD with his crimes  
10 beginning -- his arrests beginning at age sixteen for burning  
11 and larceny going all the way forward to age forty. The key  
12 obviously is whether he could be legitimately diagnosed with  
13 conduct disorder prior to age fifteen; and without going back  
14 and taking another look at the record, I believe that he  
15 probably could have, in which case an APD diagnosis would  
16 probably be diagnosable, but that would be the key issue,  
17 whether he could be diagnosed with conduct disorder before  
18 fifteen.

19 Q. So is it your testimony, Dr. Prentky, that you are not  
20 affirmatively diagnosing Mr. Carta with antisocial personality  
21 disorder but that he would probably qualify for the diagnosis?

22 A. I tried to address my rationale for not diagnosing him  
23 with APD earlier this morning with counsel. It's very clear  
24 that an APD diagnosis is highly problematic for purposes of  
25 civil commitment, and Amy Phenix has made that quite clear in

1 her report with Vognsen that APD simply is not adequate, it's  
2 not enough to alone justify civil commitment.

3 So there are really two issues here: One, although he can  
4 be diagnosed with APD, or more likely that he could be  
5 diagnosed with APD, he is not being civilly committed because  
6 of his long history of antisocial behavior. He's being  
7 committed or petitioned for commitment because of a presumptive  
8 risk for committing a sex offense. So that there is reason to  
9 believe, certainly from that article by Amy Phenix that  
10 justifies and supports my own opinion, that APD alone standing  
11 alone is not adequate as a diagnosis. And in my earlier  
12 comments, I suggested that it simply doesn't go to the  
13 second/third prong nexus, the language that suggests that  
14 whatever this diagnosis is increases the likelihood of an  
15 increased risk of an outcome of a sexual crime.

16 Q. Assuming for the moment, Dr. Prentky, that the diagnosis  
17 does apply or did apply, would it apply at the same level that  
18 it did ten years ago, if you were to diagnose it today?

19 A. I guess in my estimation -- and I have not been involved  
20 with Mr. Carta as a therapist, but my sense of Mr. Carta,  
21 having met with him twice, is that he certainly is a changed  
22 individual, that he's not the same person that came to prison  
23 eight years ago; that although he has been periodically  
24 sanctioned for his various non-sexual criminal offenses, as I  
25 mention in my report, this is the first time in his long career



1 that he has endured a long period of incarceration, eight  
2 years. And this is a fairly serious sanction, and, moreover,  
3 it's the first time that he's ever been sanctioned for a sexual  
4 offense. I think all of that is significant. The fact that he  
5 is fifty years old now is of significance. We tend not to take  
6 those factors into consideration, but it clearly is part and  
7 parcel to everything that we know about the diminution of risk  
8 as a function of age.

9 Q. Is there a phenomenon in the literature which is described  
10 as "burnout" when talking about antisocial personality  
11 disorder?

12 A. The burnout has been ascribed to generic criminals. I  
13 think it was initially ascribed to psychopaths, but it clearly  
14 speaks to, in a more colloquial way, what I was just saying;  
15 that there is a diminution of risk as a function of aging, that  
16 risk does diminish as we get older, even among the most serious  
17 offenders, including psychopaths.

18 Q. Dr. Prentky, are you aware that Mr. Carta smoked  
19 cigarettes in the past?

20 A. I don't recall that.

21 THE COURT: You're referring to burnout?

22 MR. GOLD: No, your Honor. I was --

23 THE COURT: That's just a joke.

24 MR. GOLD: Oh, I was planning a joke of my own, kind  
25 of.

1 Q. If he had, could he have been diagnosed with nicotine  
2 dependence?

3 A. Well, he certainly could have been.

4 THE COURT: Well, he doesn't know if he was dependent.

5 Q. Dr. Prentky, you stated in your cross-examination that, in  
6 your opinion, psychologists and psychiatrists presumably are  
7 compelled to use the DSM in an evaluation such as this?

8 A. If I used the word "compelled," I'm not sure that that's  
9 an accurate word. I think there's a reasonable expectation  
10 that we will draw our diagnoses from the DSM.

11 Q. A reasonable expectation by whom?

12 A. By the court. I think that the DSM conveys the authority  
13 that is expected by the court in rendering a diagnosis; that if  
14 we simply offer a diagnosis that's not part of well-established  
15 taxonomy, then it will reasonably lead to unreliability.  
16 Again, we could all propose diagnoses that are virtually at  
17 random, we could make up diagnoses, or we could use systems  
18 that are unvalidated. So we're left with the one diagnostic  
19 system that is recognized throughout the community of  
20 professionals, and that is the DSM, despite the fact that it is  
21 not designed to diagnose people like Mr. Carta. That's why  
22 we're struggling with this NOS variation of a new diagnosis  
23 called "hebephilia," because for Mr. Carta, he falls between  
24 multiple cracks, and there is no diagnostic category for him  
25 other than using this wastebasket called "paraphilia NOS."

1 Q. Dr. Prentky, what is your defense for not formally  
2 diagnosing Mr. Carta? How do you defend the fact that you did  
3 not formally diagnose Mr. Carta with substance abuse disorders  
4 pursuant to the DSM?

5 A. If I were doing a clinical evaluation of Mr. Carta, if I  
6 were doing an intake evaluation of Mr. Carta, I obviously would  
7 have diagnosed him with substance abuse. I would have thought  
8 to diagnose him with APD if it seemed appropriate. I would  
9 have diagnosed him with all of the relevant axes. The reason I  
10 did not diagnose him with those entities here is that they  
11 simply don't go to the decision ultimately that I must make as  
12 to whether there is some diagnosis that will result in or lead  
13 to difficulties refraining from sexually violent conduct, and,  
14 in my estimation, neither of those diagnoses were acceptable.  
15 And I point out that no one that has evaluated Mr. Carta has  
16 relied exclusively on diagnoses having to do with substance  
17 abuse or antisociality to render a decision that he did or did  
18 not comply with the requirements of the statute. All of the  
19 other examiners went to either the plausibility of a hebephilia  
20 diagnosis in the case of Dr. Phenix, or the implausibility of  
21 that diagnosis in the case of Dr. Bard, because such a  
22 diagnosis could be statutorily relevant; it could be the kind  
23 of diagnosis that would in fact lead to or result in an outcome  
24 of sexually violent conduct.

25 Q. Dr. Prentky, am I correct that you scored the Static-99 in

1 your report in a provisional manner?

2 A. I guess it's reasonable to use the word "provisional." I  
3 was skeptical about the appropriateness of the Static-99, but,  
4 as I said earlier, given that the other examiners had in fact  
5 scored it, I went ahead and scored it in an "as if" capacity,  
6 as if it was appropriate to use in this case using the risk of  
7 injury offense as the key offense.

8 Q. But it was your opinion that the risk of injury offense  
9 did not qualify under the rules as a Category A offense?

10 A. Well, again, Counsel, it's unclear. When you go to the  
11 guidelines, they speak to two issues: one, the issue of  
12 self-report, and, two, the issue of crimes that are pled down.  
13 And it seems to me once again that there's some gray area here,  
14 there's an area of ambiguity as to whether this particular  
15 circumstances surrounding this offense was appropriate to use  
16 as the index for governing offense for scoring the Static-99.  
17 Whether there was intent, and it seems to me that that's the  
18 language from the guidelines, whether it's clear that there was  
19 intent to commit a sexual offense, the intent was apparent if  
20 you rely on Mr. Carta's self-report.

21 Q. And do you rely on self-report for coding this item?

22 A. I personally do not rely on self-report for coding  
23 criminal history. I think that the Static-99 makes it clear  
24 that self-report should not be relied upon, or at the very,  
25 very least should be used very advisedly for coding the five

1 criminal history variables. And I think there's good reason  
2 for that that I tried to describe earlier; that I would much  
3 prefer official documentation because the result of which is  
4 that everyone is relying on the same official documentation.  
5 It doesn't mean that the official documentation is highly  
6 reliable, but it does mean that everyone is relying on the same  
7 evidence.

8 Q. Dr. Prentky, you testified on cross-examination --

9 THE COURT: How much longer do you have here?

10 MR. GOLD: Twenty minutes.

11 THE COURT: A lot of this is repetitive, so --

12 MR. GOLD: I need to get it in, your Honor.

13 THE COURT: Well, if it's repetitive, I'm going to  
14 stop because some of it is just going over the same thing we  
15 keep going over.

16 MR. GOLD: Well, I mean, I -- twenty minutes, Judge.  
17 I mean, I'm going over points that were made in  
18 cross-examination.

19 THE COURT: I know, but we went through them amply on  
20 direct too, so unless it's something new, let's try and move it  
21 along. In other words, we've gone through all of this. At  
22 this point it's repetitive on some points, not on all but on  
23 some.

24 MR. GOLD: Right. Did you want to -- I'm going to  
25 continue?

1 Q. Dr. Prentky, did you have something else to say on that  
2 last answer?

3 A. I was simply going to comment that there's a reason why  
4 all examiners issue the caveat at the very beginning of their  
5 evaluation warning the client to be careful what they disclose  
6 and to talk about only what's known on the records because the  
7 evaluation is not confidential. Again, the whole intent is to  
8 try to restrict the evaluation to that which is in the pool of  
9 discoveries, what is known to the criminal justice system.

10 Q. Dr. Prentky, you testified that the high label was  
11 arbitrary. That was the word you use. What do you mean when  
12 you say that the high label is arbitrary?

13 A. Simply just that, that there's nothing inherently high  
14 about drawing a cutoff line and marking a particular bracket or  
15 range of scores as low, moderate, moderately high, high. You  
16 know, it's entirely up to the individual investigator to draw  
17 those lines in certain places and to note that perhaps based on  
18 a certain life experience, performance experience from your  
19 table, that certain scores deserve to be thought of as low,  
20 moderate, or high. In other words, it's not empirically  
21 driven; it is arbitrary. It's up to the investigator to draw  
22 those lines.

23 Q. Dr. Prentky, are you familiar with the past iteration of  
24 the Static-99 where scores of 6 or above were reported all the  
25 same?

1 A. Yes.

2 Q. And are you familiar with the fact that now Static-99  
3 scores greater than 6 have their own associated recidivism  
4 rates according to the developers?

5 A. In the new, using the new normative sample?

6 Q. Yes.

7 A. Is that what you're referring to?

8 Q. Yes.

9 A. Yes.

10 Q. Does that affect your opinion as to whether the labels of  
11 high, medium as you've just stated it are appropriate?

12 A. I rarely ever use those labels, Counsel. I don't find  
13 that they're helpful because, as I said, because they're  
14 arbitrary, which I mean by that they're not empirically  
15 derived, I don't find that they're particularly useful. The  
16 bin that somebody falls into is defined by the relative  
17 proportion of individuals in that bin who were noted to have  
18 reoffended after a certain time period, five or ten, fifteen  
19 years. That to me is about as useful as the life table  
20 becomes. Noting that your client is among individuals who have  
21 this particular history, calling that person high, moderate, or  
22 low tends not to add much to the mix for me.

23 Q. Now, Dr. Prentky, you didn't report recidivism percentages  
24 for the Static-99 in the report that you drafted. Why was  
25 that?

1 THE COURT: He's gone through that. That he has gone  
2 through.

3 MR. GOLD: Well, did he say why he didn't do it? I  
4 think he was impeached on that point, Judge, so I'm just --  
5 A. Sorry. Are you asking me again that question?

6 Q. Yes. Is there a reason why in drafting your report you  
7 did not report recidivism percentages at all?

8 A. Sure. I mean, it's because I was concerned about the  
9 appropriateness of the use of this instrument, the  
10 appropriateness of the use of a scale for Mr. Carta. This is a  
11 rather unusual case. If I were absolutely confident in the  
12 appropriateness of the Static-99 score for him, then I would  
13 have reported the accompanying -- the bin that he fell into and  
14 whatever the tables were, or, rather, whatever the  
15 probabilistic estimates were for the different time periods.  
16 But it can be very deceiving applying a scale inappropriately  
17 to a client because the accuracy of those probabilistic  
18 estimates that we derive from those life table is no more  
19 accurate than the similarity of your client to the individuals  
20 that are in the normative sample from which those probabilistic  
21 estimates were derived.

22 So what we have here is an odd case of a man with a long  
23 history of antisocial behavior, who at the end of this long  
24 career at the age of forty is finally arrested and convicted on  
25 a sexual offense; to wit, the risk of injury to a minor. How



1 that individual, Mr. Carta, falls into the mix of all of those  
2 people that comprise the normative samples for the Static-99 is  
3 unclear to me.

4 Q. The recidivism percentages that you just reported to  
5 Ms. Serafyn, what did you consult to get those percentages?

6 A. Two different life tables reflecting two different  
7 normative samples from the revised norms for the Static-99R.

8 Q. You testified that you use the high-risk group when you do  
9 refer to the percentage recidivism rates. Why is that,  
10 Dr. Prentky?

11 MS. SERAFYN: Objection, your Honor. It's not what he  
12 did here, so I think it's just far, far beyond the scope of his  
13 report.

14 MR. GOLD: Your Honor, I don't understand the  
15 objection. I mean, she asked him extensive questions about it,  
16 and he just said that.

17 THE COURT: Yes, that's overruled, although what he  
18 used before and why he didn't score before he's gone through  
19 extensively before, and he gives extensive answers now. So  
20 let's just go shorter answers, just succinct to the questions  
21 being asked. We'll never finish.

22 So what's the question again? And just short answers.

23 Q. Dr. Prentky, you testified, in using the Static-99, when  
24 you do report the results, that you use the high-risk reference  
25 group. Is that right, and what --

1 THE COURT: Yes or no.

2 Q. Yes or no, is that right?

3 A. Yes, I testified I use the five preselected high-risk  
4 samples.

5 Q. And what is your justification for using those high-risk  
6 samples?

7 A. I want the most conservative estimate possible; and it  
8 seems to me that if the person is being petitioned for civil  
9 commitment, then that individual properly fits into a sample of  
10 individuals that were deemed high-risk.

11 Q. Does it concern you for this purpose that a large portion  
12 of those samples is your Bridgewater sample, the men released  
13 from the Bridgewater Treatment Center from the 1960s to the  
14 1980s?

15 A. I'm aware that that's one of the five samples. I'm not  
16 sure what question you're asking me. Does it concern me that  
17 that's one of the samples?

18 Q. Does that sample, in your opinion, offer accurate risk  
19 estimates of risks posed by people currently being released  
20 from prison?

21 A. I'm not sure, Counsel, whether it does or it doesn't; but  
22 it behooves me, if I'm going to use the Static-99R or the  
23 Static-2002R, to use the life tables that are made available to  
24 me by the developer of those scales. So whether it makes sense  
25 to me or not, those are the tables that I have to use. I have

1 no other choice. I'm not sure what -- I mean, obviously, as I  
2 mentioned a moment ago, it's absolutely critical that your  
3 client match the individuals in the normative groups that are  
4 being used to derive these estimates. That absolutely is  
5 essential. And the more the client departs from the  
6 individuals in that normative sample, the more unreliable those  
7 estimates are going to be.

8 Q. You did not use the Static-99R or Static-2002R in this  
9 case, right?

10 A. As I said to Attorney Serafyn, I used the Static-99, which  
11 is the Static-99R with the exception of the age variable. And  
12 at his age, that one variable would not confer any further  
13 risk, which is why I --

14 Q. Dr. Prentky, actually, let me --

15 A. That's why I have the same score as Dr. Phenix.

16 Q. Dr. Prentky, I just want to ask a couple of questions, and  
17 then we're out. But if you were to learn that in fact a  
18 fifty-year-old gets one point less on the Static-99R, would  
19 that affect your opinion?

20 A. A 5 instead of 6?

21 Q. Correct.

22 A. My opinion remains, Attorney Gold, that there simply is an  
23 absence of evidence of risk related to committing a sexual  
24 offense. It simply isn't there.

25 Q. Now, Dr. --

1 A. Ask me a completely different question, I'll answer it,  
2 you know --

3 Q. Dr. Prentky, are you compelled to use the samples that the  
4 developers of the instruments direct you to?

5 A. I believe so. There are two options: Either use none, or  
6 you use what the developers instruct you to.

7 Q. Well, Dr. Prentky, did I understand your testimony to be  
8 that although Dr. Hanson would like you to use the Static-99R  
9 and Static-2002R, you are not compelled to do that because as a  
10 forensic psychologist, you choose the method in which you  
11 deliver a risk assessment to the court? Isn't that right?

12 A. Essentially that's right, Counsel. I mean, obviously Karl  
13 Hanson can't tell me to use the Static-99R. He was simply  
14 recommending that the Static-99R replace the Static-99 and that  
15 the 2002R replace the 2002; and he's also suggesting that if  
16 you're going to use two instruments, it would make most sense  
17 to couple the Static-99R with the 2002R. That is the extent of  
18 his recommendation to me. That doesn't mean I have to use one  
19 or both or either one. In this particular case, I chose to use  
20 the SVR-20 in combination with the Static-99.

21 Q. And nothing, by the same token, would compel you to use a  
22 particular risk sample just because Dr. Hanson told you to?

23 A. If I use the Static-99R or the Static-2002R and I report  
24 probabilistic estimates, then I must use the normative samples  
25 that are provided to me by the test developer. I am not

1 required to report probabilistic estimates. I can simply  
2 report a score. But then the score alone is not going to  
3 convey very much information to the court. So I suppose I  
4 could simply say, this is the score and this is the risk  
5 category that the individual has been assigned to by the test  
6 developer, or I could report the score and the probabilistic  
7 estimates from the life table, or I could do both.

8 That, incidentally, is what we're talking about with  
9 respect to an actuarial instrument. When you're talking about  
10 the SVR-20, there are no investigator-prescribed cutoffs, none.  
11 There are no life tables, none. There's simply a score. It's  
12 up to the user to impute significance to the score on an  
13 SVR-20.

14 Q. Dr. Prentky, you were asked to consult your notes on the  
15 issue of whether Mr. Carta had told you during the interview he  
16 had been sexual with another inmate in the prison. Did you  
17 have the opportunity to do that?

18 A. Yes, I did take a look, Counsel.

19 Q. What did you find?

20 A. And I erred in my report to the Court, and I apologize. I  
21 was undoubtedly confusing Mr. Carta at that moment with one of  
22 the other individuals I have reviewed and indeed testified for  
23 for the court.

24 Q. Now, Ms. Serafyn asked you whether you were familiar with  
25 research regarding child pornography offenders and hands-on

1 offenders. Do you recall that?

2 THE COURT: Well, you know, let me just back up. So,  
3 in other words, you did not think he was -- he never told you  
4 he was sexual with someone in the prison?

5 MR. GOLD: That's what he said.

6 THE COURT: No, he didn't quite actually say that. He  
7 just said he was in error but didn't say how. What do you now  
8 believe based on your notes?

9 THE WITNESS: It simply wasn't there, your Honor. I  
10 said I apologize that when I was in court on Friday, it was the  
11 third trial that I was in that week. I was tired, and I simply  
12 made a mistake.

13 THE COURT: No, no, that's fine. Similarly, I've been  
14 doing a lot. I just wanted to make sure I understood what you  
15 said was in error, so you've clarified the record.

16 Q. Dr. Prentky, no particular research was mentioned, but  
17 what research are you familiar with that is responsive to  
18 Ms. Serafyn's question, which I believe was, are you familiar  
19 with research which shows that child pornography offenders who  
20 have hands-on offenses are at elevated risk to reoffend  
21 sexually?

22 A. Well, primarily the work of Michael Seto and his  
23 colleagues.

24 Q. And did you consider that research in developing your  
25 opinion in this case?

1 A. I am well aware of Michael's research in this area, and  
2 the answer is "yes."

3 Q. Dr. Prentky, one last question on the Static-99 just for  
4 the purpose of clarity, and I know you didn't actually score it  
5 in this particular case, but is it your testimony in going  
6 about these evaluations that you always use the high-risk group  
7 as a reference group for scoring the Static-99 because it's the  
8 most conservative when you do these SVP or SDP cases?

9 A. Yes. I always like to err on the side of caution, so I'm  
10 always going to look at the highest possible base rate  
11 associated with a particular score. That would be my  
12 preference.

13 Q. And that is your rationale for reporting the high-risk  
14 group results?

15 A. Well, indeed, I think it's a reasonable rationale that  
16 these high-risk samples are composed of individuals that have  
17 been determined by the court to be high risk. So it seems to  
18 me that that's a reasonable reference group for those  
19 individuals that are being considered by the court to be deemed  
20 high risk and hence committable.

21 MR. GOLD: Nothing further from us, your Honor.

22 MS. SERAFYN: At the risk of annoying the Court, I'd  
23 like to ask just two questions.

24 THE COURT: Two questions you have. Stay right there.

25 RECROSS-EXAMINATION BY MS. SERAFYN:

1 Q. Dr. Prentky, when you met with Mr. Carta, did you  
2 specifically ask him whether he was attracted to  
3 thirteen-year-old boys?

4 A. I specifically asked Mr. Carta to explain to me or share  
5 with me descriptively the kind of boy, the kind of bodies, if  
6 you will, that he was most attracted to. I didn't say  
7 "thirteen-year-olds." I said, "Describe to me your preferred  
8 sexual object." What I was trying to get at was the relative  
9 Tanner stage of development that was associated with his  
10 preference, and he clearly was not -- not describing a Tanner 1  
11 individual. He was describing a youthful post-pubescent  
12 adolescent, somewhere in the age range, the crude age range of  
13 roughly fifteen to twenty.

14 Q. Dr. Prentky, if you learned that Mr. Carta testified  
15 during this trial that he was still attracted to  
16 thirteen-year-old boys, could that potentially change your  
17 opinion as to whether he would have serious difficulty in  
18 refraining from sexually violent conduct if released?

19 A. It would not surprise me, Counsel, if Mr. Carta testified  
20 to that effect because there certainly are plenty of  
21 thirteen-year-olds today that would qualify for the kind of  
22 sexually preferred body shape and body development that  
23 Mr. Carta described to me. It wouldn't surprise me in the  
24 least to hear that, and I wouldn't jump to the conclusion from  
25 that that he was a pedophile or even a hebephile. I'm not even



1 sure, again, what that means, but I would not jump to the  
2 conclusion that because he said that, it qualified as a mental  
3 disorder. It's part and parcel of the wide range of normal  
4 male development that he's responding to rather than the age.  
5 So there are certainly thirteen-year-olds that are sufficiently  
6 physically developed that he would find them sexually  
7 appealing.

8 MS. SERAFYN: Thank you, your Honor.

9 MR. GOLD: Your Honor, I just --

10 THE COURT: No, no. Thank you very -- no, it's done.

11 MR. GOLD: But I just remembered something, and it  
12 would just take one second. Just let me ask the question, and  
13 then if you overrule it, it's fine.

14 THE COURT: All right, but if it's one of these  
15 repetitive ones like so many of them were --

16 MR. GOLD: No, no.

17 FURTHER REDIRECT EXAMINATION BY MR. GOLD:

18 Q. You were asked, Dr. Prentky, whether you scored something  
19 called the Abel Assessment of Sexual Interest on cross the  
20 other day. Why did you not score the Abel Assessment of Sexual  
21 Interest or perform that test on Mr. Carta? That's the  
22 question.

23 A. The Abel has its maximum discrimination with respect to  
24 sexual preference for children, and the Abel does a good job of  
25 discriminating between those people who have a sexual

1 preference for prepubescent children and those who don't. The  
2 Abel regards sexual preference for adolescents as normal.  
3 There's nothing in the record to suggest that anyone considers  
4 Mr. Carta to be a pedophile. I don't think anyone has  
5 intimated that.

6 THE COURT: Thank you.

7 A. If that was an issue, I would have administered the Abel,  
8 but it's not; and if he had responded by a preference to the  
9 adolescents, the Abel would regard that as normal.

10 THE COURT: Thank you very much.

11 MR. GOLD: Thank you.

12 THE COURT: Anything based on the Abel?

13 MS. SERAFYN: No, your Honor.

14 THE COURT: Thank you very much, Dr. Prentky. I'll  
15 see you -- well, I think we may not have any more cases up here  
16 in Boston, so good luck in North Carolina.

17 THE WITNESS: Well, thank you.

18 THE COURT: Thank you very much for your services. So  
19 I think we can sign off now.

20 THE WITNESS: Thank you very much.

21 (Witness excused.)

22 THE COURT: Now, I just had one question about whether  
23 or not we learned any more about when he can start getting  
24 services.

25 MS. PIEMONTE-STACEY: Your Honor, we're in continuing

1 discussions with Bureau of Prisons. You know, one question  
2 that I have not asked Mr. Gold yet was whether he, Mr. Carta,  
3 would agree to go to Butner to get services until the decision  
4 is released, so that's one possibility.

5 THE COURT: Are there services available at Devens?

6 MS. PIEMONTE-STACEY: The services available at Devens  
7 is more limited than that, which at least at this point he's  
8 asking for and needs. It's a more limited program designed for  
9 people who have been convicted of a sex offense who are nearing  
10 the end of their term, so I think it's a more limited treatment  
11 program. And, again, this is just based on the limited amount  
12 of information I have since our last court appearance, but we  
13 have another conference call set up for today.

14 THE COURT: You were going to be reporting back when?

15 MS. PIEMONTE-STACEY: April 5.

16 THE COURT: Do you know whether if the better  
17 treatment program is down in Butner, whether he would want to  
18 do that?

19 MR. GOLD: Your Honor, I can't speak for him. That  
20 requires a discussion. I mean, I --

21 THE COURT: I understand.

22 MR. GOLD: No, no, but I would just say, I think where  
23 we were, which is we have this period of writing. I don't want  
24 to precommit my guy, you know, and that he's in individual  
25 therapy with someone who works for the program anyway, but he

1 doesn't see her systemically. He's been at Devens for a period  
2 of time. We're talking about a period of months where he could  
3 be starting to get a momentum and a groove. I mean, that's  
4 essentially the only thing we're asking for the BOP, so the  
5 more information that we can find the better.

6 THE COURT: Well, make a decision based on what  
7 program is available at Devens, what's available at Butner,  
8 whether or not this woman, whom apparently he does somewhat  
9 like, but apparently she doesn't really do sex offender  
10 treatment --

11 MR. GOLD: No, no, she does, but she's not doing it  
12 with him, but she's --

13 THE COURT: No, I meant with him, with him. Maybe she  
14 could just move into that mode. Maybe that would be some way  
15 of handling it. I can understand why he doesn't want to be  
16 transported to Butner. Last time I lost Mr. Shields. I lost  
17 him in Brooklyn. Do you remember that plaintiff that no one  
18 knew who he was, and he's sitting in the Brooklyn Detention  
19 Center, and I had to get Mr. Swomley to get him out? So I can  
20 see why he wants to stay at Devens, so if there's a way of  
21 maybe having this therapist move into sex offender treatment  
22 one on one, you know, just something so we can just -- you  
23 know, it's going to take us four to six months just to sort out  
24 all the writing.

25 MS. PIEMONTE-STACEY: Well, and a review -- and again

1 this is hearsay, I did not look at the note myself -- but I'm  
2 informed that a review of the notes indicate that he was never  
3 prohibited from discussing his sex offenses with her.

4 THE COURT: I know, but I hate that reverse thing, he  
5 was never prohibited. Why don't they actively offer him sex  
6 offender therapy. He's now said to me affirmatively he wants  
7 it, so apart from whether or not -- I'm not trying to pin  
8 anyone, they did something bad in the past. I'm saying he's  
9 now told us he wants it, so someone should be proactive in  
10 giving it to him.

11 MS. PIEMONTE-STACEY: Right, and I guess those are  
12 cyclical, and they start on certain dates, and that's what I'm  
13 looking to; but he also said, "She said I couldn't," and I'm  
14 saying I don't think that's true.

15 THE COURT: Well, why don't you proactively have  
16 someone say to this woman, "Start sex offender treatment."

17 MS. PIEMONTE-STACEY: Your Honor, this is what we're  
18 working on. I've tried.

19 THE COURT: No, I understand. Listen, I understand  
20 totally. You all can do what you can do with the Bureau of  
21 Prisons. At most, I can only recommend. I'm not faulting you.  
22 Tell them, "The mean judge said start sex offender treatment."  
23 He wants it. This has been dead time. Whether he's on the  
24 streets or here, there's no possible good that comes from  
25 having him just sit there and not do sex offender treatment.

1 MS. PIEMONTE-STACEY: They got that message, your  
2 Honor.

3 THE COURT: Okay, all right, and so I'm happy to, if  
4 nothing comes of this --

5 MR. GOLD: We'll shake the tree.

6 THE COURT: Shake the tree. I understand if he  
7 doesn't want to go to Butner. It may be he doesn't get the  
8 best treatment, though, so he just has to weigh that.

9 MR. GOLD: Right.

10 THE COURT: All right, so did we come up with  
11 deadlines for all the briefing, et cetera?

12 MR. GOLD: We have, I think, two sets of transcripts  
13 coming, and I think what we said was thirty days from when we  
14 receive the transcripts up to but not including today.

15 THE COURT: Right.

16 MR. GOLD: Today will come last, so -- and I'm not  
17 sure if we've been in touch with -- how many reporters do we  
18 have on this, just two?

19 THE COURT: The combination of him speaking so slowly  
20 and the delay in the transcript (Sic), I actually think,  
21 although this -- I actually think it will be very -- it took a  
22 long time, but I'm actually thinking --

23 MR. GOLD: People are going to say, what was the Judge  
24 so pushing them for? It was --

25 THE COURT: I think I wouldn't do this again.

1 MR. GOLD: Oh, this?

2 THE COURT: Yes.

3 MR. GOLD: But we had it in mind because you had been  
4 suggesting it, and I think in this case as --

5 THE COURT: No, it was my fault. I'm just saying, I  
6 don't know that I would -- I found it extraordinarily  
7 frustrating, the combination of the delay time between the  
8 question and when he'd respond, and his slowness of speech, and  
9 the fact that much of it was repetitive, the combination made  
10 it -- we could have done it better, we just could have done it  
11 better if he was live here, I think. He would have sensed our  
12 body language; we could have jumped in more easily. It just  
13 doesn't work that way. And I don't know why the transmission  
14 was so poor. I've had better ones. Have you all used it  
15 before?

16 MR. GOLD: I have too. I've had better transmission.  
17 This was not great.

18 THE COURT: It was very, very slow. Have you seen  
19 better ones?

20 MS. PIEMONTE-STACEY: Your Honor, in this courtroom  
21 with Mr. Shields, I thought that went better.

22 THE COURT: That went much better.

23 MS. PIEMONTE-STACEY: I think it's in part Dr. Prentky  
24 and then maybe -- I'm not technologically savvy, but I just  
25 wonder if it was just a worse connection than before and if

1 that's the chance you take with some of these.

2 THE COURT: Have you seen better ones, Mary Ellen?

3 (Discussion off the record between the Court and  
4 Clerk.)

5 THE COURT: It's never been so slow. Well, in any  
6 event, we're done, and next time I'll know, or at least we  
7 should maybe test it out and see if there's a problem. Where  
8 was he, the U.S. Attorney's office there?

9 MS. PIEMONTE-STACEY: He was.

10 THE COURT: You might want to just report back to them  
11 and let them know that we thought the transmission was poor.

12 MS. SERAFYN: And, your Honor, we've done a number of  
13 depositions in these cases where Dr. Prentky has gone to the  
14 U.S. Attorney's office in Newark, and it's been fine.

15 THE COURT: It's not been like this?

16 MS. SERAFYN: No.

17 MR. GOLD: And also the video quality was poorer than  
18 it has to be.

19 THE COURT: I happen to agree with you on all those  
20 counts, and so -- well, it's too late now, but we would check  
21 it out in the future. All right, thank you to everyone. I'll  
22 wait till I see your briefs. And then we decided we wanted  
23 oral argument? Is that what we decided?

24 MR. GOLD: Yes.

25 MS. SERAFYN: At the same time I think the rulings and



1 findings are due shortly after that.

2 THE COURT: Excuse me?

3 MS. SERAFYN: Sorry. The closing arguments would be  
4 shortly after we submit our rulings and findings.

5 THE COURT: Yes, yes, yes, okay. All right, thank  
6 you.

7 MS. SERAFYN: Thank you.

8 THE COURT: Thank you.

9 THE CLERK: All rise.

10 (Adjourned, 11:44 a.m.)  
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## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court Reporter,  
do hereby certify that the foregoing transcript, Pages 7-1  
through 7-65 inclusive, was recorded by me stenographically at  
the time and place aforesaid in Civil Action No. 07-12064-PBS,  
United States of America v. Todd Carta, and thereafter by me  
reduced to typewriting and is a true and accurate record of the  
proceedings.

In witness whereof I have hereunto set my hand this 12th  
day of April, 2011.

/s/ Lee A. Marzilli

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LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER